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5 Attorneys for Plaintiff
ENVIRONMENTAL RESEARCH CENTER

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11 Attorneys for Defendant
12 FOODSCIENCE CORPORATION

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF ALAMEDA

16 ENVIRONMENTAL RESEARCH CENTER,
a California non-profit corporation,

17 Plaintiff,

18 v.

19 FOODSCIENCE CORPORATION; and
20 DOES 1-100;

21 Defendants.

CASE NO. RG-12628911

**[PROPOSED] STIPULATED CONSENT
JUDGMENT; [PROPOSED] ORDER**

Health & Safety Code § 25249.5 *et seq.*

ACTION FILED: May 4, 2012
TRIAL DATE: None Set

1 **1. INTRODUCTION**

2 **1.1** On May 4, 2012, Plaintiff Environmental Research Center (“ERC” or “Plaintiff”), a
3 non-profit corporation, as a private enforcer, and in the public interest, filed a legal action
4 (“Complaint”) pursuant to the provisions of Cal. Health & Safety Code Section 25249.5 et seq.
5 (“Proposition 65”) against FoodScience Corporation (“FoodScience”). In this action, ERC claims
6 that the products manufactured and distributed by FoodScience, as more fully described in Section
7 1.3, contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive toxin, and
8 that such products expose consumers at a level requiring a Proposition 65 warning. ERC and
9 FoodScience shall sometimes be referred to individually as a “Party” or collectively as the
10 “Parties.”

11 **1.2** ERC is a California non-profit corporation dedicated to, among other causes, helping
12 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
13 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
14 encouraging corporate responsibility. ERC has diligently prosecuted this matter and is settling this
15 case in the public interest.

16 **1.3** FoodScience is a business entity that employs ten or more persons. FoodScience
17 arranges the manufacture, distribution and/or sale of FoodScience of Vermont G.I. Benefits;
18 FoodScience Corp. Mountain Naturals of Vermont Chitolean; FoodScience Corp. Mountain
19 Naturals of Vermont Citrin Plus; FoodScience Corp. Mountain Naturals of Vermont Para-Safe;
20 FoodScience Corp. Mountain Naturals of Vermont Superior Oranges; and Food Science Corp.
21 Mountain Naturals of Vermont Superior Greens Detoxifier, including any products that have an
22 identical formulation to those Covered Products listed above in this Section 1.3 (collectively, the
23 “Covered Products”).

24 **1.3.1** In addition, FoodScience shall submit to ERC, prior to the Effective Date, a
25 list of private label or contract-manufactured (“Private Label”) products that have an identical
26 formulation to the Covered Products listed above in Section 1.3, along with the names of
27 FoodScience’s Private Label customers. FoodScience may update this list from time to time.
28 FoodScience shall be entitled to submit this information to ERC confidentially. In the event that a

1 dispute arises with respect to compliance with the terms of this Consent Judgment entered by the
2 Court as to any Private Label versions of the Covered Products, ERC and FoodScience shall employ
3 good faith efforts to seek entry of a protective order that governs access to and disclosure of the
4 brand name and customer information for such products in any litigation or proceeding, before any
5 such information is disclosed by ERC in connection with that litigation or proceeding.

6 **1.4** The Complaint is based on allegations contained in the Notice of Violation dated
7 April 15, 2011 (the "Notice") served on the California Attorney General, other public enforcers and
8 FoodScience. A true and correct copy of the Notice is attached hereto as Exhibit A. More than 60
9 days have passed since this Notice was mailed and no public enforcement entity has filed a
10 complaint against FoodScience with regard to the Covered Products or the alleged violations.

11 **1.5** ERC's Notice and the Complaint in this action allege that FoodScience exposes
12 persons in California to lead from the Covered Products without first providing clear and reasonable
13 warnings, in violation of Cal. Health & Safety Code Section 25249.6. FoodScience denies all
14 material allegations contained in the Notice and the Complaint and specifically denies that the
15 Covered Products require a Proposition 65 warning.

16 **1.6** Subsequent to receiving ERC's Notice of Violation, FoodScience modified the label
17 to reduce dosage for use of two of the Covered Products, G.I. Benefits and Chitolean, which has
18 resulted in a daily lead level of no more than 0.5 micrograms per day, as calculated pursuant to
19 Section 3.4, below.

20 **1.7** FoodScience denies and disputes the claims asserted in the Notice and the
21 Complaint. Furthermore, FoodScience contends that any lead present in the Covered Products is
22 the result of naturally occurring levels, as provided for in California Code of Regulations, Title 27,
23 Section 25501(a). Furthermore, FoodScience maintains that all of its products satisfy applicable
24 federal standards and requirements.

25 **1.8** The Parties have entered into this Consent Judgment in order to settle, compromise
26 and resolve disputed claims and thus avoid prolonged and costly litigation. Nothing in this Consent
27 Judgment shall constitute or be construed as an admission by any of the Parties, or by any of their
28 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,

1 divisions, affiliates, franchisors, franchisees, licensors, licensees, customers, distributors,
2 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
3 wrongdoing, or liability, including without limitation, any admission concerning any alleged
4 violation of Proposition 65, nor shall this Consent Judgment be offered or admitted as evidence in
5 any administrative or judicial proceeding or litigation in any court, agency, or forum, except with
6 respect to an action seeking to enforce the terms of this Consent Judgment.

7 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
8 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
9 other or future legal proceeding unrelated to these proceedings.

10 **1.10** The Effective Date of this Consent Judgment shall be the date on which it is
11 approved and entered as a judgment by this Court.

12 **2. JURISDICTION AND VENUE**

13 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
14 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
15 over FoodScience as to the acts alleged in the Complaint, that venue is proper in Alameda County,
16 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of
17 all claims which were or could have been asserted in this action based on the facts alleged in the
18 Notice or the Complaint.

19 **3. INJUNCTIVE RELIEF, WARNINGS AND TESTING**

20 **3.1** Any Covered Products manufactured after the Effective Date that FoodScience
21 thereafter sells in California, markets or distributes for sale in California, or offers for sale to a third
22 party for retail sale to California must either (1) qualify as a "Reformulated Covered Product" under
23 Section 3.3 or (2) meet the warning requirements set out in Section 3.2.

24 **3.2 Warnings**

25 If FoodScience provides a warning pursuant to Section 3.1, FoodScience shall provide the
26 following warning:

27 **WARNING: This product contains lead, a chemical known to the State of California to**
28 **cause [cancer and] birth defects or other reproductive harm.**

1 The term “cancer and” shall be included in the warning only if the maximum daily dose
2 recommended on the label contains more than 15 micrograms of lead as determined as determined
3 pursuant to Section 3.4.

4 The warning shall be securely affixed to or printed upon the container or label of the
5 Covered Product. The warning shall be displayed with such conspicuousness, as compared with
6 other words, statements, or design of the label or container, as applicable, to render the warning
7 likely to be read and understood by an ordinary individual under customary conditions of purchase
8 or use. The warning appearing on the label or container shall be at least the same size as the largest
9 of any other health or safety warnings correspondingly appearing on the label or container, as
10 applicable, of such product, and the word “warning” shall be in all capital letters and in bold print.

11 **3.3 Reformulated Covered Products**

12 A Reformulated Covered Product is one for which the maximum recommended daily
13 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the
14 quality control methodology described in Section 3.5.2.

15 **3.4 Calculation for Determining Microgram Per Day Level**

16 For purposes of this Consent Judgment, daily lead exposures levels shall be measured in
17 micrograms, and shall be calculated using the following formula: micrograms of lead per gram of
18 product, multiplied by grams of product per serving of the product (using the largest serving size
19 appearing on the product label), multiplied by servings of the product per day (using the largest
20 number of servings in a recommended dosage appearing on the product label), which equals
21 micrograms of lead exposure per day.

22 **3.5 Testing**

23 **3.5.1** Once a year, on or before the anniversary of the entry of the Consent
24 Judgment, FoodScience shall test, or cause to be tested, at least five (5) randomly selected samples
25 of each Covered Product (in the form intended for sale to California, and manufactured after the
26 date of the prior year’s random test, as applicable) for lead content. Provided however that this
27 annual testing requirement does not apply to a Covered Product for which FoodScience has
28 provided the warning specified in Section 3.2 since the Effective Date or during the preceding year.

1 **3.5.2** All testing pursuant to this Consent Judgment shall be performed using a
2 laboratory method that complies with the performance and quality control factors appropriate for
3 the method used (including limit of detection, limit of quantification, accuracy, and precision) and
4 that meets the following criteria: Closed-vessel, microwave-assisted acid digestion employing
5 high-purity reagents, followed by Inductively Coupled Plasma-Mass Spectrometry (ICP-MS),
6 achieving a limit of quantification of ≤ 0.060 mg/kg, or any other testing method agreed upon in
7 writing by the Parties.

8 **3.5.3** All testing pursuant to this Consent Judgment shall be performed by a
9 laboratory that is approved by, accredited by, or registered with the United States Food & Drug
10 Administration for the analysis of heavy metals. Nothing in this Consent Judgment shall limit
11 FoodScience's ability to conduct, or require that others conduct, additional testing of the Covered
12 Products, including the raw materials used in their manufacture.

13 **3.5.4** Upon written request by ERC, FoodScience shall provide to ERC any test
14 results and documentation of testing undertaken by FoodScience pursuant to Section 3.5 within ten
15 working days of receipt by FoodScience of ERC's request. FoodScience shall retain all test results
16 and documentation for a period of four years from the date of the test.

17 **3.5.5** If tests conducted pursuant to this Section 3.5 demonstrate that no warning is
18 required for a Covered Product during each of four consecutive years, then the testing requirements
19 of this Section 3.5 are no longer required as to that Covered Product. However, if after the four-
20 year period, FoodScience changes ingredient suppliers for any of the Covered Products and/or
21 reformulates any of the Covered Products, FoodScience shall test that Covered Product at least once
22 after such change is made.

23 **4. SETTLEMENT PAYMENT**

24 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil penalties,
25 attorneys' fees and costs (which includes, but is not limited to filing fees and costs of attorneys,
26 experts and investigators and testing nutritional health supplements), FoodScience shall make a total
27 payment of \$30,000.00 (thirty thousand dollars) within ten (10) business days of receiving the
28 Notice of Entry of Judgment. Said payment shall be for the following:

1 **4.1.1** \$2,197.00 shall be payable as civil penalties pursuant to Health & Safety
2 Code Section 25249.7(b)(1). Of this amount, \$1,647.75 shall be payable to the Office of
3 Environmental Health Hazard Assessment (“OEHHA”) and \$549.25 shall be payable to
4 Environmental Research Center. Cal. Health & Safety Code Section 25249.12(c)(1) & (d).
5 FoodScience shall send both civil penalty payments to ERC’s counsel who shall be responsible to
6 forward the civil penalty payment to OEHHA along with a copy of the transmittal to FoodScience.

7 **4.1.2** \$6,591.00 payable to Environmental Research Center in lieu of further civil
8 penalties, for activities such as (1) investigating, researching and testing consumer products that
9 may contain Proposition 65 listed chemicals; (2) awarding a grant to a California non-profit
10 foundation/entity dedicated to public health as set forth in the Addendum; (3) funding the ERC Eco
11 Scholarship Fund for high school students in California interested in pursuing an education in the
12 field of environmental sciences; (4) funding ERC’s Voluntary Compliance Program to work with
13 companies not subject to Proposition 65 to reformulate their products to reduce potential consumer
14 exposures; (5) funding ERC’s RxY Program to assist various medical personnel to provide testing
15 assistance to independent distributors of various products; (6) funding ERC’s Got Lead? Program to
16 assist consumers in testing products for lead; (7) funding the ERC Cancer Scholarship Fund to
17 provide scholarships to college students in California who have previously been diagnosed with a
18 form of cancer; (8) aiding various cancer research centers and organizations in their ongoing efforts
19 to assist families and children in cancer treatment facilities; (9) Operation Education Mini-Grants
20 program, which awards California public school teachers mini-grants for environmental lesson
21 plans or special projects; (10) maintaining, supporting and increasing ERC’s Database of lead-free
22 and Proposition 65 complaint products; (11) increasing ERC’s tracking and cataloging of
23 contamination-free sources for specific ingredients used in the types of products ERC test, and
24 sharing this information with companies to try and reduce lead levels in their products; (12) post-
25 settlement monitoring of past consent judgments; and (13) the continuing enforcement of
26 Proposition 65. In deciding the grantee proposals or distributions, ERC takes into consideration
27 several factors including: (a) the nexus between the alleged harm in the underlying cases(s), and the
28 grant program work; (b) the potential for toxics reduction, prevention, remediation or education

1 benefits to California residents from the proposal; (c) the budget requirements of the proposed
2 grantee and the alternate funding sources available to it for its projects; and (d) ERC's assessment
3 of the grantee's chances for success in its program work.

4 **4.1.3** \$10,000.00 payable to ERC as reimbursement to ERC for reasonable
5 investigation costs associated with the enforcement of Proposition 65 and other costs incurred as a
6 result of investigating, bringing this matter to FoodScience's attention, litigating and negotiating
7 this settlement in the public interest.

8 **4.1.4** \$8,212.00 payable to Michael Freund as reimbursement of ERC's attorneys'
9 fees and \$3,000.00 payable to Karen Evans as reimbursement of ERC's attorneys' fees.

10 **4.2** FoodScience's payments shall be mailed or delivered to the Law Office of Michael
11 Freund.

12 **5. MODIFICATION OF CONSENT JUDGMENT**

13 **5.1** This Consent Judgment may be modified only by (i) written agreement and
14 stipulation of the Parties, (ii) upon noticed motion filed by any Party, followed by entry of a
15 modified consent judgment by the Court, or (iii) as provided below in Section 5.2. Before filing
16 any motion with the Court for a modification to this Consent Judgment, the Party seeking
17 modification shall meet and confer with the other Party to determine whether the modification may
18 be achieved by consent. If a proposed modification is agreed upon, then the Parties will present the
19 modification to the Court by means of a stipulated modification to the Consent Judgment.

20 **5.2** Should ERC, or the California Attorney General, reach a settlement of a Proposition
21 65 claim regarding foods, dietary supplements, or other nutritional products as to any other
22 defendant or noticed company that establishes allowances for naturally occurring lead or that allows
23 averaging of lead exposure or consumption that results in less stringent lead standards than those
24 specified in Section 3.3 or 3.4 ("Alternative Lead Standards"), then FoodScience shall be entitled to
25 seek to modify the terms of this Consent Judgment to make it consistent with such Alternative Lead
26 Standards. In the event of such modification, FoodScience shall reimburse ERC its reasonable
27 attorneys' fees and costs in filing and arguing a joint motion or application in support of a
28

1 modification of the Consent Judgment; provided however, that those fees and costs shall not exceed
2 \$8,000 (eight thousand dollars) total without the prior written consent of FoodScience.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

4 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
5 Consent Judgment.

6 **6.2** Any Party may, by motion or application for an order to show cause filed with this
7 Court, enforce the terms and conditions contained in this Consent Judgment provided that it first
8 undertakes a good faith effort to resolve the dispute informally as required under Section 13. The
9 prevailing Party may request that the Court award its reasonable attorney's fees and costs associated
10 with such motion or application.

11 **6.3** In the event that ERC alleges that any Covered Product fails to qualify as a
12 Reformulated Covered Product (and for which ERC alleges that no warning has been provided
13 pursuant to Section 3.2), then ERC shall inform FoodScience in a reasonably prompt manner of its
14 test results, including information sufficient to permit FoodScience to identify the Covered Products
15 at issue. FoodScience shall, within thirty (30) days following such notice, provide ERC with testing
16 information demonstrating FoodScience's compliance with Sections 3.3 and 3.5, if warranted. The
17 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action pursuant
18 to Paragraph 13.

19 **7. APPLICATION OF CONSENT JUDGMENT**

20 **7.1** This Consent Judgment shall apply to, be binding upon and benefit the Parties, and
21 respective subsidiaries and divisions and the successors and assigns of any of them.

22 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
24 behalf of itself, and in the public interest, and FoodScience, of any alleged violation of Proposition
25 65 or its implementing regulations for failure to provide Proposition 65 warnings of exposure to
26 lead from the handling, use or consumption of the Covered Products. ERC, on behalf of itself, its
27 agents, officers, representatives, attorneys, successors and/or assignees, and in the public interest,
28 hereby releases and discharges: (a) FoodScience and its parent companies, subsidiaries, affiliates,

1 and divisions; (b) each of their respective licensors, licensees, franchisors, franchisees, joint
2 venturers, partners, vendors, manufacturers, packagers, contractors, and finished product and
3 ingredient suppliers; (c) each of the distributors, wholesalers, retailers, users, packagers, customers
4 (including but not limited to Private Label customers) and all other entities in the distribution chain
5 down to the consumer of any Covered Product of the persons and entities described in (a) and (b)
6 above; and (d) each of the respective officers, directors, shareholders, employees, and agents of the
7 persons and entities described in (a) through (c), above (the persons and entities identified in (a),
8 (b), (c), and (d), above, including the predecessors, successors and assigns of any of them, are
9 collectively referred to as the “Released Parties”), from any and all claims, actions, causes of action,
10 suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,
11 attorney’s fees and expert fees), costs and expenses (collectively, “Claims”) as to any alleged
12 violation of Proposition 65 arising from or related to the failure to provide Proposition 65 warnings
13 regarding lead for Covered Products manufactured prior to the Effective Date.

14 **8.2** ERC, on behalf of itself, its agents, representatives, attorneys, successors and/or
15 assignees, and not on behalf of the general public, hereby releases and discharges the Released
16 Parties from any and all known and unknown Claims for alleged violations of Proposition 65, or for
17 any other statutory or common law, arising from or relating to alleged exposures to lead in the
18 Covered Products as set forth in the Notices. It is possible that other Claims not known to the
19 Parties arising out of the facts alleged in the Notice or the Complaint and relating to the Covered
20 Products will develop or be discovered. ERC, on behalf of itself only, acknowledges that this
21 Consent Judgment is expressly intended to cover and include all such Claims, including all rights of
22 action therefor. ERC has full knowledge of the contents of California Civil Code section 1542.
23 ERC, on behalf of itself only, acknowledges that the Claims released in Sections 8.1 and 8.2 may
24 include unknown Claims, and nevertheless waives California Civil Code section 1542 as to any
25 such unknown Claims. California Civil Code section 1542 reads as follows:

26 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH
27 THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS
28 OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE,
WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

1 ERC, on behalf of itself only, acknowledges and understands the significance and consequences of this
2 specific waiver of California Civil Code section 1542.

3 **8.3** Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance by any Released Party with Proposition 65 regarding alleged exposures to lead in the
5 Covered Products.

6 **8.4** ERC, on one hand, and FoodScience, on the other hand, release and waive all Claims
7 they may have against each other for any statements of actions made or undertaken by them in
8 connection with the Notice or the Complaint. Provided however, nothing in this Section 8 shall
9 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

10 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

11 **9.1** In the event that any of the provisions of this Consent Judgment are held by a court
12 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

13 **10. GOVERNING LAW**

14 **10.1** The terms and conditions of this Consent Judgment shall be governed by and
15 construed in accordance with the laws of the state of California.

16 **11. PROVISION OF NOTICES**

17 **11.1** All notices required to be given to either Party to this Consent Judgment by the
18 other shall be in writing and sent to the following agents listed below by (a) first-class mail, (b)
19 overnight courier, or (c) personal delivery:

20 **FOR ENVIRONMENTAL RESEARCH CENTER:**

21 Chris Heptinstall, Executive Director
22 Environmental Research Center
23 3111 Camino del Rio North, Suite 400
San Diego, CA 92108

24 Michael Bruce Freund
25 Law Offices of Michael Freund
1919 Addison Street, Suite 105
26 Berkeley, CA 94704
27 Telephone: (510) 540-1992
Facsimile: (510) 540-5543

1 Karen Evans
2 Coordinating Counsel
3 Environmental Research Center
4 4218 Biona Place
5 San Diego, CA 92116
6 Telephone: (619) 640-8100

7
8 **FOR THE FOODSCIENCE DRUG COMPANY**

9 Dale R. Metz
10 CEO
11 FoodScience Corporation
12 20 New England Drive STE 10
13 Essex Junction Vermont 05452

14 With a copy to:

15 Arnold & Porter LLP
16 Trenton Norris
17 Sarah Esmaili
18 Three Embarcadero Center 7th Floor
19 San Francisco, CA 94111
20 Telephone: (415) 471-3100
21 Facsimile: (415) 471-3400

22 **12. DRAFTING**

23 **12.1** The terms of this Consent Judgment have been reviewed by the respective counsel
24 for the Parties to this Consent Judgment prior to its signing, and each Party has had an opportunity
25 to fully discuss the terms with counsel. The Parties agree that, in any subsequent interpretation and
26 construction of this Consent Judgment entered thereon, the terms and provisions shall not be
27 construed against either Party.

28 **13. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

13.1 In the event a dispute arises with respect to either Party's compliance with the terms
of this Consent Judgment entered by the Court, the Parties shall meet either in person or by
telephone and endeavor to resolve the dispute in an amicable manner. No action or motion may be
filed in the absence of such a good faith attempt to resolve the dispute beforehand. In the event an
action or motion is filed, however, the prevailing Party may seek to recover costs and reasonable
attorneys' fees. As used in the preceding sentence, the term "prevailing Party" means a Party who
is successful in obtaining relief more favorable to it than the relief that the other Party was amenable

1 to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such
2 enforcement action.

3 **14. ENTIRE AGREEMENT, AUTHORIZATION**

4 **14.1** This Consent Judgment contains the sole and entire agreement and understanding of
5 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any Party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
9 to exist or to bind any of the Parties.

10 **14.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to the Consent Judgment.

12 **15. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
13 **CONSENT JUDGMENT**

14 **15.1** This settlement has come before the Court upon the request of the Parties. The
15 Parties request the Court to fully review this settlement and, being fully informed regarding the
16 matters which are the subject of this action, to:

17 (1) Find that the terms and provisions of this Consent Judgment represent a fair
18 and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to Health & Safety Code § 25249.7(f)(4),
21 approve the settlement and approve this Consent Judgment.

22 **IT IS SO STIPULATED:**

FOODSCIENCE CORPORATION

23
24 Dated: _____, 2012

Dale R. Metz, CEO

ENVIRONMENTAL RESEARCH CENTER

25
26
27 Dated: 5/17/_____, 2012

Chris Hepstingsfall, Executive Director

28 **APPROVED AS TO FORM:**

1 to providing during the Parties' good faith attempt to resolve the dispute that is the subject of such
2 enforcement action.

3 **14. ENTIRE AGREEMENT, AUTHORIZATION**

4 14.1 This Consent Judgment contains the sole and entire agreement and understanding of
5 the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
6 negotiations, commitments and understandings related hereto. No representations, oral or
7 otherwise, express or implied, other than those contained herein have been made by any Party
8 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
9 to exist or to bind any of the Parties.

10 14.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to the Consent Judgment.

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13 **CONSENT JUDGMENT**

14 15.1 This settlement has come before the Court upon the request of the Parties. The
15 Parties request the Court to fully review this settlement and, being fully informed regarding the
16 matters which are the subject of this action, to:

17 (1) Find that the terms and provisions of this Consent Judgment represent a fair
18 and equitable settlement of all matters raised by the allegations of the Complaint, that the matter has
19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to Health & Safety Code § 25249.7(f)(4),
21 approve the settlement and approve this Consent Judgment.

22 **IT IS SO STIPULATED:**

FOODSCIENCE CORPORATION

23 Dated: 5/14, 2012

24 
Dale R. Metz, CEO

25 **ENVIRONMENTAL RESEARCH CENTER**

26 Dated: _____, 2012

27 _____
Chris Hepstinstall, Executive Director

28 **APPROVED AS TO FORM:**

1 Dated: 5/16, 2012

ARNOLD & PORTER LLP

Sarah Esmail

Sarah Esmail
FoodScience Corporation

2
3
4
5 Dated: 5/17, 2012

LAW OFFICE OF MICHAEL FREUND

MF
Michael Freund
Attorney for Environmental Research Center

6
7
8
9
10 **ORDER AND JUDGMENT**

11 Based upon the Parties' stipulation, and good cause appearing, this Consent
12 Judgment is approved and judgment is hereby entered according to its terms.

13
14 Dated: _____, 2012

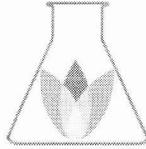
Judge, Superior Court of the State of California

Addendum

The grant to a third party California non-profit organization referenced in Section 4.1.2 shall be made to the following:

St. Jude Children's Research Hospital at www.StJude.org

The mission of St. Jude Children's Research Hospital is to advance cures, and means of prevention, for pediatric catastrophic diseases through research and treatment. ERC shall ensure that all funds will be disbursed and used in accordance with Proposition 65's statutory purposes and ERC's mission statement, articles of incorporation, and by laws within six months of receipt.



Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

April 15, 2011

VIA CERTIFIED MAIL

Current CEO or President
FoodScience Corporation
20 New England Drive, Suite 10
Essex Junction, VT 05452

Claudia Orlandi
(FoodScience Corporation's Registered
Agent for Service of Process)
20 New England Drive
Essex Junction, VT 05452

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

VIA PRIORITY MAIL

District Attorneys of All California Counties
and Select City Attorneys
(See Attached Certificate of Service)

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

EXHIBIT A

The name of the Company covered by this Notice that violated Proposition 65 is:

FoodScience Corporation

The products that are the subject of this Notice and the chemical in those products identified as exceeding allowable levels are:

FoodScience Of Vermont G.I. Benefits - Lead
FoodScience Corp. Mountain Naturals Of Vermont Chitolean - Lead
FoodScience Corp. Mountain Naturals Of Vermont Citrin Plus - Lead
FoodScience Corp. Mountain Naturals Of Vermont Para-Safe - Lead
FoodScience Corp. Mountain Naturals Of Vermont Superior Oranges - Lead
FoodScience Corp. Mountain Naturals Of Vermont Superior Greens
Detoxifier - Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead as chemical known to cause cancer.

This letter is a Notice to FoodScience Corporation and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving FoodScience Corporation currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the Noticed Company with a copy of this letter.

FoodScience Corporation has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product's label. FoodScience Corporation violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless FoodScience Corporation agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

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Please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: Freund1@aol.com.

Sincerely,



Chris Heptinstall
Executive Director
Environmental Research Center

cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to FoodScience Corporation and its Registered Agent for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by FoodScience Corporation

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached sixty-day Notice in which it is alleged the party identified in the Notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: April 15, 2011



Michael Freund
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On April 15, 2011, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President
FoodScience Corporation
20 New England Drive, Suite 10
Essex Junction, VT 05452

Claudia Orlandi
(FoodScience Corporation's Registered
Agent for Service of Process)
20 New England Drive
Essex Junction, VT 05452

On April 15, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On April 15, 2011, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on April 15, 2011, in Fort Oglethorpe, Georgia.



Chris Heptinstall

Service List

District Attorney, Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney, Amador County
708 Court Street, #202
Jackson, CA 95642

District Attorney, Butte County
25 County Center Drive
Oroville, CA 95965

District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney, Colusa County
547 Market Street
Colusa, CA 95932

District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
450 H Street, Ste. 171
Crescent City, CA 95531

District Attorney, El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney, Fresno County
2220 Tulare Street, #1000
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988

District Attorney, Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney, Imperial County
939 West Main Street, Ste 102
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Rm 345
Los Angeles, CA 90012

District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637

District Attorney, Marin County
3501 Civic Center, Room 130
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95482

District Attorney, Merced County
2222 M Street
Merced, CA 95340

District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020

District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517

District Attorney, Monterey County
230 Church Street, Bldg 2
Salinas, CA 93901

District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney, Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

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District Attorney, Placer County
10810 Justice Center Drive, Ste 240
Roseville, CA 95678

District Attorney, Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney, Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 9581

District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney, San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

District Attorney, San Diego County
330 West Broadway, Room 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Room 325
San Francisco, CA 94103

District Attorney, San Joaquin County
Post Office Box 990
Stockton, CA 95201

District Attorney, San Luis Obispo County
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney, Shasta County
1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 4500
Fairfield, CA 94533

District Attorney, Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney, Stanislaus County
832 12th Street, Ste 300
Modesto, CA 95353

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 519
Red Bluff, CA 96080

District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney, Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm 800
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 3rd Avenue, Ste 1620
San Diego, CA 92101

San Francisco City Attorney's Office
City Hall, Room 234
1 Drive Carlton B Goodlett Place
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113